STATE OF MICHIGAN

COURT OF APPEALS

CLINTON WESTOVER,

Plaintiff-Appellant,

v

KINGS LANDING R.V. RESORT,

Defendant-Appellee.

UNPUBLISHED
February 26, 1999

No. 207745
Lapeer Circuit Court
LC No. 96-022494 NO

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff went to defendant's premises to visit his in-laws. During the visit plaintiff rode his mountain bicycle on a steep hill in its natural state. When plaintiff rode down the hill, his bicycle hit a pothole, careened sideways, and hit a tree stump. Plaintiff fell off the bicycle and sustained injuries.

Plaintiff filed suit, alleging that defendant negligently failed to maintain its property in a safe condition and to warn of hazards on the property. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the hazard was open and obvious. The trial court, while observing that plaintiff engaged in risky behavior by riding his bicycle in the manner that he did, granted defendant's motion on the ground that the danger was open and obvious.

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

On appeal, plaintiff argues that the trial court erroneously applied an assumption of the risk/contributory negligence theory by ruling that he engaged in risky behavior. Plaintiff also contends that, even assuming arguendo that the trial court properly applied the open and obvious doctrine, summary disposition was inappropriate because a genuine issue of fact existed as to whether the impediments on the hill were open and obvious. Plaintiff cites *Bertrand v Alan Ford, Inc*, 449 Mich

606, 611; 537 NW2d 185 (1995) for the proposition that a possessor of land must warn an invitee of even an open and obvious danger if the possessor expects that the invitee will not discover the danger or will not protect himself from it.

We disagree with plaintiff's arguments and affirm the trial court's decision. A danger is open and obvious if an average person with ordinary intelligence is able to discover it and realize the risk upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). The evidence showed that as plaintiff rode down the hill without using his brakes, he looked straight ahead, but that he could not see exactly where he was going due to the steep incline. Plaintiff acknowledged that the pothole and the stump were visible upon inspection of the area; however, he did not see them because he was not looking for impediments as he rode down the hill. Plaintiff made no effort to make even a casual inspection of the ground over which he rode at high speed. Given plaintiff's statement that the impediments were visible upon inspection of the area, the trial court properly granted summary disposition based on the open and obvious doctrine. *Novotney*, *supra*. Although a property owner is not relieved of the duty to exercise due care to protect an invitee against unreasonable danger even if the danger is open and obvious, *Hottman v Hottman*, 226 Mich App 171, 175-176; 572 NW2d 259 (1997), a property owner is not required to make his entire premises foolproof. *Bertrand*, *supra*, at 616-617. A reasonably prudent person would expect to encounter impediments such as potholes and stumps on a hill in its natural state.

Affirmed.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Michael J. Talbot